

MEMORANDUM ENDORSEMENTEdwards v. Feldman et al

17-cv-10116 (NSR)

On December 27, 2017, Theodore Brandon Edwards (“Plaintiff”) filed a Complaint against Dr. Feldman, R.N. K. Georgy, Dr. John Doe, Orange County Medical Regional, and Orange County (“Defendants”). (ECF No. 2.) On February 10, 2020, the Court dismissed Plaintiff’s complaint and allowed him to file an Amended Complaint as to any claims that were dismissed without prejudice. (ECF No. 53.) Plaintiff filed an Amended Complaint, dated March 17, 2020, against Dr. Feldman and Orange Regional Medical Center. (ECF No. 54.)

On May 4, 2020, Defendant Feldman filed a motion to dismiss the Amended Complaint. (ECF No. 55.) On May 5, 2020, Defendant Feldman withdrew the motion and instead requested a pre-motion conference. (ECF No. 59; ECF No. 61). The request for a pre-motion conference was served on Defendant on May 5, 2020. (ECF No. 60.)

On May 6, 2020, Defendant Orange Regional Medical Center filed a letter motion requesting leave to file a pre-answer motion to dismiss the Amended Complaint. (ECF No. 63.) The request for leave to file a pre-answer motion to dismiss was served on Defendant on May 7, 2020. (ECF No. 64.)

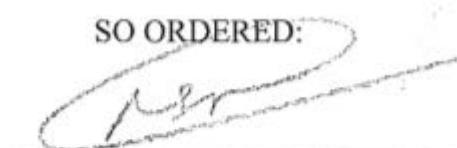
On November 12, 2020, Plaintiff wrote to the Court inquiring as to the status of the case and requesting a conference. (ECF No. 66.) The Court received no correspondence from Plaintiff regarding Defendants’ pre-motion requests.

The Court has reviewed the correspondence and waives the pre-motion conference requirement. Defendants are permitted to file their motions to dismiss with a briefing schedule as follows: moving papers are to be served (**not filed**) on December 21, 2020; Plaintiff’s opposition papers are to be served (**not filed**) on February 8, 2021; Defendants’ replies are to be served on February 22, 2021.

All motion documents shall be filed on the reply date, February 22, 2021. The parties shall mail two courtesy copies of their respective documents to Chambers as the documents are served. As long as the Court’s Emergency Individual Rules and Practices remain in effect, parties are additionally directed to email courtesy copies to Chambers. The Clerk of the Court is kindly directed to terminate the motions at ECF No. 55 and 63, mail a copy of this endorsement to Plaintiff, and show service on the docket.

Dated: November 18, 2020
White Plains, NY

SO ORDERED:



NELSON S. ROMÁN
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THEODORE BRANDON EDWARDS,

Plaintiff,

v.

**NOTICE OF MOTION
TO DISMISS THE AMENDED
COMPLAINT**

**ORANGE COUNTY; DR. FELDMAN; ORANGE
REGIONAL MEDICAL CENTER,**

Case No. 7:17-cv-10116

Defendants.

PLEASE TAKE NOTICE:

MOTION BY:

BARCLAY DAMON, LLP

Attorneys for Defendant Dr. Sorel Feldman
Office and Post Office Address
100 Chestnut Street, Suite 2000
Rochester, New York 14604

DATE, TIME AND PLACE OF HEARING:

_____, 2020 at ____ am/pm
Hon. Nelson S. Roman
United States District Court Judge
United States District Court
Southern District of New York
Federal Building and US Courthouse
300 Quarropas St.
White Plains, NY 10601

SUPPORTING PAPERS:

Declaration of Paul A. Sanders, dated May 4, 2020 with attached exhibits and a Memorandum of Law dated May 4, 2020.

RELIEF DEMANDED:

An Order dismissing Plaintiff's Amended Complaint pursuant to Fed. R. Civ. P. Rule 12(b)(6) with respect to defendants Sorel Feldman, M.D., and for such other, further, and additional relief as this Court deems just and proper.

GROUND FOR RELIEF:

Plaintiff's Amended Complaint fails to state a cause of action upon which relief can be granted pursuant to Fed. R. Civ. P. Rule 12(b)(6).

The Amended Complaint fails to state a cause of action for deliberate indifference to a serious medical need, pursuant to 42. U.S.C. § 1983.

The Amended Complaint fails to allege any State law claims.

DEMAND FOR ANSWERING PAPERS:

Pursuant to Local Civil Rule 6.1, any opposing affidavits and answering memoranda shall be served within fourteen (14) days after service of the moving papers, and any reply affidavits and memoranda of law shall be served within seven (7) days after service of the answering papers. In computing periods of days, refer to Fed. R. Civ. Pro. 6 and Local Rule 6.4.

Note that the failure to respond to this motion may result in dismissal of the Amended Complaint and termination of this action.

DATED: May 4, 2020

BARCLAY DAMON LLP

By: s/ Paul A. Sanders
Paul A. Sanders

Attorneys for Defendant Dr. Sorel Feldman
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Rochester, New York 14604
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TO: Theodore Brandon Edwards
Plaintiff Pro Se
DIN No. 17A5263
Sing Sing Correctional Facility
354 Hunter Street
Ossining, New York 10562-5442



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May 6, 2020

Via ECF

Hon. Nelson S. Roman, US District Judge
United States District Court
Southern District of New York
The Hon. Charles L. Brieant Jr.
Federal Building and United States Courthouse
300 Quarropas St.
White Plains, NY 10601-4150

RE: Theodore Brandon Edwards v. Orange County, et al.
17-cv-10116
Our File No.: 05579-64915

Dear Hon. Sir:

This office represents Orange Regional Medical Center ("ORMC") in the above-referenced matter. In accordance with Your Honor's Individual Rules of Practice, please allow this letter to serve as ORMC's request for permission to file a pre-answer motion to dismiss Plaintiff's amended complaint.

On or about March 13, 2019, ORMC moved to dismiss Plaintiff's original complaint. By Decision and Order, dated February 10, 2020, Your Honor granted ORMC's motion to dismiss. Plaintiff served an amended complaint on or about March 17, 2020.

Pro se Plaintiff, Theodore Edwards, commenced this action under 42 U.S.C. §1983 seeking to recover damages based on alleged violations of his constitutional rights. With respect to ORMC, Plaintiff alleges he underwent a CT scan at ORMC on or about October 24, 2017 to determine if he had a cancerous left testicle. ORMC gave Plaintiff a liquid to assist with the CT scan. Plaintiff has not received the results of that CT scan. Plaintiff further alleges that the CT scan performed at ORMC had nothing to do with diagnosing cancer. As a result of that CT scan, Plaintiff claims he is suffering from radiation sickness. It appears Plaintiff's sole claim with respect to ORMC is that Plaintiff underwent an unnecessary CT scan.

May 6, 2020
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It is respectfully submitted that ORMC is entitled to dismissal of the amended complaint as Plaintiff has failed to plead a cognizable claim under 42 U.S.C. §1983. This Court, by Decision and Order, dismissed Plaintiff's Section 1983 claim against ORMC with prejudice. *See* Dkt. 53, p. 13. As such, Plaintiff should be barred from raising that same claim in his Amended Complaint.

If the Amended Complaint is read to allege a purported state law claim of medical malpractice, that claim must fail as well. Plaintiff fails to allege the elements of medical malpractice, specifically "a departure from good and accepted medical practice and evidence that such departure was a proximate cause of plaintiff's injury." *Gale v. Smith & Nephew, Inc.*, 989 F. Supp. 2d 243, 252 (S.D.N.Y. 2013) (quoting *Williams v. Sahay*, 783 N.Y.S.2d 664, 666 (App. Div. 2d Dep't 2004)). While Plaintiff alleges injury, including radiation sickness, there are no specific facts which show that the injury was a result of a deviation of the standard of care. Therefore, Plaintiff's claim sounding in medical malpractice should be dismissed.

Even if it is determined that Plaintiff's state law claim is viable, it is respectfully submitted that the Court should decline to exercise supplemental jurisdiction. Plaintiff has failed to plead any claims arising under federal law, as such the state law claims should be dismissed. "As a general rule, the Second Circuit and the Supreme Court "have held that when the federal claims are dismissed the state claims should be dismissed as well." *Bennett v. Care Correction Sol. Med. Contractor*, No. 15 CIV. 3746 (JCM), 2017 WL 1167325, at *10 (S.D.N.Y. Mar. 24, 2017) (quoting *In re Merrill Lynch Ltd. Partnerships Litig.*, 154 F.3d 56, 61 (2d Cir. 1998)).

Based on the foregoing, ORMC respectfully requests leave to serve a pre-answer motion to dismiss Plaintiff's Amended Complaint.

Respectfully Submitted,

/s/ *Seamus P. Weir*

SEAMUS P. WEIR

SPW/spw/1795948

cc: Theodore Brandon Edwards #17A5263
Sing Sing C.F.
354 Hunter Street
Ossining, NY 10562-5442

Nov 12th, 2020

From: Theodore Edwards

Re: 7:17-CV-10116 (NSR)

17-A-5263

Otisville corr FAC.

P.O. Box 8

Otisville, NY. 10963

Dear Hon. Nelson S. Roman

I have been transferred to the above facility.

I don't know the status of this civil case due to the Pandemic of covid-19.

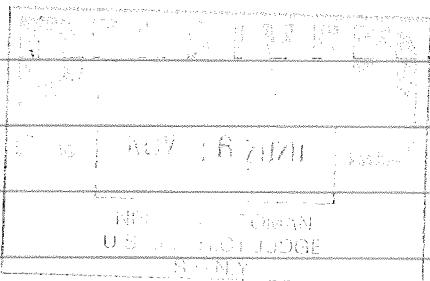
Is their anyway to have a video -
via conference?

I hope is well with you and your staff and your loved ones.

Sincerely

Theodore Edwards
17A5263





NEW YORK STATE
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
OFFENDER CORRESPONDENCE PROGRAM

NAME: Theodore Ecksels DIN: 145263



Printed On Recycled Paper

OTISVILLE CORRECTIONAL FACILITY
P.O. BOX 8
OTISVILLE, NEW YORK 10963

NAME: Theodore Ecksels DIN: 17AS263

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Correctional Facility



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Hon. Nelson S. Roman
U.S. District Court Judge
Federal Bldg And U.S. Courthouse
300 Quarropas St.
White Plains, New York 10601